

General Information

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Program Description (VCP, brownfields, or related)

DEC is developing resources to assist eligible entities in Alaska on the necessary elements for applying for EPA brownfields grants. The program also will provide technical assistance, perform some site assessments, and develop a site inventory and public database of brownfields properties in Alaska. The state program objectives are to develop the necessary tools to enable economic redevelopment of properties that are underutilized as a result of real or perceived environmental impacts. The program will dedicate staff resources to working with government entities, responsible parties, land owners, EPA, and developers to effectively facilitate appropriate environmental remedies appropriate for site conditions leading to reuse of contaminated properties.

Brownfields definition: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contamination.

Program titles:

- Contaminated Sites Program—includes Leaking Underground Storage Tank (LUST) sites; Streamlined Cleanup Program (SCP)—replaces former State Voluntary Cleanup Program; Brownfields Program
- Underground Storage Tank Program

Liability relief provisions: Prospective Purchaser Agreements have been developed for specific sites that meet appropriate criteria. Their specific use to date has been limited to governmental entities that have obtained contaminated properties through foreclosure. Upon satisfactory completion of cleanup activities, a site undergoing cleanup may receive a No Further Action determination by the DEC for sites that meet the most stringent clean up criteria, and No Further Remedial Action Planned decision for sites that meet acceptable risk-based criteria for that site. The state is evaluating the

implementation of Conditional Closures for sites that require continued or long-term management of land-use controls that may be associated with the risk determination for that site.

Financial incentives (grants, loans, tax provisions, etc.): There are no grants, loans, or other provisions available at this time.

Legislative or program site eligibility requirements: SCP

- DEC is currently assessing the use of the SCP and proposing revisions that may result in improvements to the SCP process. DEC encourages the use of the SCP to clean up low-risk petroleum contaminated sites. The SCP relies on self-reporting and reduced government oversight. The goal is to accelerate the cleanup of these sites while continuing to protect human health and the environment. The program can be used for sites regulated under Alaska Administrative Code (AAC) 18 AAC 75, *Oil and Other Hazardous Substances Pollution Control* regulations, and 18 AAC 78, *Underground Storage Tanks (USTs)* regulations. Both sets of regulations use slightly different terminology; however, the term “contaminated site” is a generic term referring to both regulated UST and non-UST contamination.

Other eligibility requirements: A site owner or operator, prospective owner or operator, financier, or other person(s) who is interested in cleaning up a site that meets the following criteria may apply for participation in the SCP. The site must:

- Present a low risk to human health and the environment
- Be limited to petroleum hydrocarbon contamination

SCP is not appropriate if:

- Non-aqueous phase product is identified in ground water.
- Surface water is known to be contaminated or has a high potential of being contaminated.
- Alternative cleanup levels are proposed.
- Contaminants other than petroleum are present.
- Contamination has migrated across the property line.
- Formal institutional controls are proposed.

SCP may not be appropriate if:

- Contamination has a high potential to impact an environmentally sensitive area.
- Ground water contamination is present.

If, at any time, information is discovered showing the site no longer meets the SCP eligibility criteria, the applicant should contact DEC as soon as possible. Unless DEC determines otherwise, the site is no longer eligible for the SCP and will be referred to the appropriate DEC program for review.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Contaminated Sites Program—Using funds from EPA, DEC is conducting brownfields assessments at eligible properties in Alaska. Alaska's assessment program is currently being pilot tested using limited funds through a cooperative agreement with EPA. Funding is very limited, and not guaranteed.
- Site eligibility—Brownfields assessment funding may only be used at properties that meet EPA brownfields funding criteria. DEC will not fund assessments at properties where the owner is responsible for the contamination. DEC has discretion in selecting areas to target for environmental assessment assistance and prefers to target properties that: are abandoned or publicly owned; have low or moderate contamination; suffer from the stigma of liability, or have a prospective purchaser willing to buy and pay for the cleanup of the property, if needed. The selection process is guided by criteria used to help establish relative priorities among the properties in Alaska. The criteria include the following:
 - Property redevelopment has the potential to provide a high public benefit.
 - Property control and ownership transfer is not an impediment—preference will be given to sites that are publicly owned, either directly by a municipality or through a quasi-public entity such as a community development corporation.
 - There is a strong municipal commitment—either financially, or through commitment of municipal resources for other components of the project.
 - There is a clear municipal/community vision and support for property revitalization.
 - There are adequate leveraged funds available for the cleanup and redevelopment, and/or the property has strong development potential (perhaps demonstrated by past or present developer interest).
 - ADEC assessment assistance is crucial to the property's redevelopment; lack of an assessment has proven to be an obstacle at the property.
 - Existing information supports redevelopment—the property will likely have low to moderate contamination levels, and redevelopment will provide tangible benefits for the community.

DEC will generally only approve expenditures for assessments when the property is publicly held. If a public or nonprofit entity is aware of a brownfields site that is privately held but has potential for redevelopment that will offer significant public benefit, DEC will consider allocating assessment funds for the site.

- Eligible applicants—Public, quasi-public or nonprofit entities (such as municipalities, tribal governments and community development organizations) interested in redeveloping abandoned or underutilized properties.

Tax incentives (abatement, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: See 18 AAC 75.375. Institutional controls discussed below.

Contaminants covered/excluded: None excluded at this time, however, sites must be of a low- to medium-risk nature to be addressed through brownfields program oversight.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): The ability to both manage and track long-term oversight for contamination poses limited risk to human health and the environment is an objective for the program. Methods to accomplish this are under analyses at this time.

The department will, after consultation with each landowner of the site, determine whether the use of an institutional control is necessary, on a site-specific basis, if the department determines that controls are required to ensure:

- Compliance with an applicable cleanup level.
- Protection of human health, safety, or welfare, or the environment.
- Integrity of site cleanup activities or improvements.

Institutional controls include: 1) the requirement for and maintenance of physical measures, such as fences and signs, to limit an activity that might interfere with cleanup or result in exposure to a hazardous substance at the site; 2) the requirement for and maintenance of engineering measures, such as liners and caps, to limit exposure to a hazardous substance; 3) restrictive covenants, easements, deed restrictions, or other measures that would be examined during a routine title search, and that limit site use or site conditions over time or provide notice of any residual contamination; and 4) a zoning restriction or land use plan by a local government with land use authority.

The use of institutional controls must, to the maximum extent practicable, be: 1) appurtenant to and run with the land so that the control is binding on each future owner of the site; and 2) maintained by each responsible person or owner of the site.

Alaska

If the department determines any of the following are necessary to protect human health, safety, or welfare, or the environment, the department will require that institutional controls be designed to accomplish one or more of the following: 1) prohibit activities on the site that might interfere with the site cleanup, operation and maintenance, monitoring, or other response actions; 2) prohibit activities that might result in the release of a hazardous substance that was contained as a part of the site cleanup activities; 3) require written notice to the department of any proposal to use the site in a manner that is inconsistent with a restrictive covenant or other required measures; and 4) grant the department and its designated representatives the right to enter the property at reasonable times to evaluate compliance with the institutional control, including the right to take samples, inspect any cleanup actions taken at the site, and inspect records relating to the operation and maintenance of the institutional control.

If the department determines that financial assurance is necessary to ensure protection of human health, safety, or welfare, or of the environment, the department will require a responsible person to provide financial assurance sufficient to cover costs of operation and maintenance, including compliance monitoring and corrective measures, for any institutional control.

If the concentrations of all residual hazardous substances remaining at the site are subsequently determined to be below the applicable cleanup levels, the department will approve, at the owner's request, elimination of the institutional control.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: None

Funding source for administrative costs and staff:

CERCLA 128(a) State and Tribal Response Program Grant

Cleanup Activities

Sites currently in VCP: DEC has recently developed the SCP, as described above, in lieu of the VCP. There are currently 148 sites assigned to SCP status.

Sites completed under VCP: 99 closures were recorded through SCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Incentives to responsible parties are under evaluation.

Public Participation

Public participation requirements (notice, comment periods, etc.): Site cleanup rules: purpose, applicability, and general provisions.

The department will seek public participation regarding activities conducted under the site cleanup rules, using methods that the department determines to be appropriate for seeking public participation.

Public participation activities (hearings, meetings, etc.): DEC uses public meetings, notifications, Web postings, and other media as determined appropriate for the issue of concern and target audience.

Statutory Authorities

- 18 AAC 75, *Oil and Other Hazardous Substances Pollution Control*
- 18 AAC 78, *Underground Storage Tanks*
- AS 46.08, Title 46: *Water, Air, Energy and Environmental Conservation*

General Information

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Program Description (VCP, brownfields, or related)

Idaho's Land Remediation Act, or Voluntary Cleanup Program (VCP), is found in Idaho Code 39-7201 et seq., and DEQ's rules implementing the Act are located at IDAPA 58.01.18. The VCP allows for the remediation of hazardous substances and petroleum contaminated sites absent an enforcement action. Under the Program, DEQ and the participant enter into a Voluntary Remediation Agreement under which DEQ and the public review and comment on the proposed Cleanup Work Plan. Once approved by DEQ, the participant conducts the cleanup and DEQ reviews the results. If the cleanup is successful, DEQ issues a No Further Action letter, DEQ and the participant negotiate a Covenant Not to Sue, lender liability protections are provided, and the site owner is afforded a tax exemption related to the increase in property value due to the cleanup.

In 2004, DEQ established its Brownfields Revitalization and Environmental Site Response Program. This Program facilitates the reuse of brownfields sites and works to develop Web tools, authorities and guidance aimed at improving the efficiency of all DEQ remediation programs.

In 2006, Idaho passed into law the Community Reinvestment Pilot Initiative that provides \$1.5 million in funds for voluntary cleanups. The Community Reinvestment Pilot Initiative amended Idaho's existing VCP statute (the Land Remediation Act) by creating a new financial incentive to draw private parties into the program. All participation is voluntary and all \$1.5 million is spent directly on cleanup. Ten privately-owned sites will be selected to participate in the Pilot program, ranked based upon rural location, abandoned/blighted status (negative community impact), clear/strong reuse plans and elimination of public health risks. The private party funds and conducts the cleanup with DEQ oversight via the VCP. When cleanup is complete, DEQ reviews technical data to ensure

cleanup goals are met and DEQ reviews the records of expenses the party incurred conducting the cleanup. DEQ reviews both and certifies both if acceptable/reasonable. DEQ then reimburses the private party 70% of their 'certified cleanup costs,' up to \$150,000 per site.

Brownfields definition: Real properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Voluntary Cleanup Program (Land Remediation Act)
- Brownfields Revitalization and Environmental Site Response Program (Brownfields Revitalization Program)
- Risk Evaluation Program (Risk-Based Cleanups)
- Community Reinvestment Pilot Initiative – amended Idaho's existing VCP statute (the Land Remediation Act)

Liability relief provisions: Certificate of Completion (COC) and Covenants Not To Sue (CNTS) are available under Idaho's VCP. After receiving a COC, a party can receive a CNTS for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan. The CNTS extends to any current or future owner or operator of the site or portion thereof of who did not cause, aggravate, or contribute to the release or threatened release.

During the implementation of an approved voluntary remediation work plan, the department will not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the work plan, against a person who entered into a voluntary remediation agreement and who is implementing the work plan.

Idaho law also provides lender liability protection.

Brownfields Assessments—DEQ's Brownfields Revitalization Program funds and conducts assessments at brownfields sites. Local governments can apply to have a site assessed under this program. Details on this program are on DEQ's Web site.

Voluntary Cleanup Program Tax Incentives—Sites are eligible for a property tax exemption (not to exceed seven years) that amounts to 50% of the remediated land value. The exemption may be granted only if the covenant not to sue is in full force and effect for the entire period of exemption, and the site remains in the possession of the owner for the entire exemption period.

Financial incentives (grants, loans, tax provisions, etc.): The Community Reinvestment Pilot Initiative – DEQ reimburses a private party 70% of their 'certified cleanup costs,' up to \$150,000 per site. See Financial Elements for more details.

Idaho

Legislative or program site eligibility requirements:

The VCP lists three reasons DEQ can reject a request to participate in the Program:

- Remediation is required under Idaho's Environmental Protection and Health Act, Idaho's Solid Waste Facilities Act, or Idaho's Hazardous Waste Management Act, or rules promulgated thereunder, or other applicable statutory or common law.
- The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment.
- The application to participate is not complete.

For the Brownfields Assessment Program, units of local governments, local redevelopment agencies, nonprofit organizations and other government entities created by the state legislature are eligible to participate in the program by submitting a completed questionnaire to DEQ. DEQ gives preference to sites where community-supported redevelopment plans are in place and where little or no site environmental information is available. The applicant must not have caused or contributed to any contamination at the site.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Community Reinvestment Pilot Initiative – DEQ reimburses a private party 70% of their 'certified cleanup costs,' up to \$150,000 per site. With this structure, the Pilot's benefit caps at a \$215,000 cleanup as follows: DEQ reimburses 70% (up to \$150,000) and the private party is responsible for the remaining 30% (\$65,000).
- In addition, as discussed previously, local governments can ask that DEQ fund and conduct assessments at brownfields sites. DEQ's Underground Storage Tank (UST)/Leaking Underground Storage Tank (LUST) program also conducts assessments at certain LUST sites.

Tax incentives (abatements, credits, etc.): Federal incentive program and VCP tax incentive described previously.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Idaho's Petroleum Storage Tank Fund provides UST site owners with environmental insurance of \$1,000,000 per tank for \$100 per year, with a \$10,000 deductible.

Program Elements

Technical Elements

Methods/standards/controls: Participants in DEQ remediation programs, including the VCP, choose between cleaning to established state standards or cleaning to site-specific standards developed using DEQ's Risk Evaluation Manual and Software, or another DEQ-approved risk evaluation methodology.

Contaminants covered/excluded: DEQ's Risk Evaluation Manual and Software includes the 185 contaminants most frequently encountered in Idaho, with the ability to add additional contaminants on a site-specific basis.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Both the VCP and DEQ's Risk Evaluation Manual authorize the use of institutional controls (e.g., deed restrictions) when conducting and determining appropriate cleanup levels and conducting site cleanups. DEQ developed a model deed restriction for use under both of these programs, located in Appendix B of the Risk Evaluation Manual.

In addition, Idaho legislature passed the Uniform Environmental Covenants Act (UECA) in 2006.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Participants must pay to DEQ two fees under the VCP: 1) a \$500 application fee; and 2) a \$2500 fee for DEQ review of the remediation work plan and site activities conducted there under.

Funding source for administrative costs and staff: Other than EPA funding sources, none.

Cleanup Activities

Sites currently in VCP: 5 sites are currently participating in the VCP.

Sites completed under VCP: To date, 1 site has been completed under the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Covenant Not to Sue; lender liability protections; and tax exemption (See previous section).

Public Participation

Public participation requirements (notice, comment periods, etc.): Before DEQ approves a proposed voluntary remediation work plan under this section, DEQ must:

- Notify local government units located in a county affected by the proposed voluntary remediation work plan.
- Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one public library in a county affected by the work plan.

- Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan.
- Provide a comment period of at least 30 days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following:
 - Submit written comments to the department concerning the proposed voluntary remediation work plan; or
 - Request a public hearing concerning the proposed voluntary remediation work plan.

Public participation activities (hearing, meetings, etc.):

If DEQ receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

Statutory Authorities

- *Idaho Land Remediation Act*, Title 39 (§§39–7201 to 39–7210), Chapter 72, Idaho Code.
- Idaho Department of Environmental Quality, IDAPA 58.01.18, Idaho Land Remediation Rules.
- *The Community Reinvestment Pilot Initiative* (Idaho Code § 39-7211) – HB 728, a \$1.5 million fund for voluntary cleanups.
- *Idaho Uniform Environmental Covenants Act (UECA)*—Idaho Code, Title 55, Chapter 30 (Idaho Code, §§ 55-3001 et seq.).

General Information

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<http://www.deq.state.or.us/wmc/cleanup/icp-main.htm>
<http://www.econ.state.or.us/brownfields.htm>

Program Description (VCP, brownfields, or related)

The Voluntary Cleanup Program (VCP) has two pathways: the Voluntary Cleanup Pathway and the Independent Cleanup Pathway. The Voluntary Cleanup Pathway provides: No Further Action (NFA) determinations, preliminary assessment review, soil cleanup standards, report/document review, operable unit approach where a section of the site may be redeveloped while cleanup is still occurring on other sections, technical assistance and regulatory guidance, negotiated scope of work, budget estimates for ODEQ oversight costs, Prospective Purchaser Agreements (PPA), and public participation. The Independent Cleanup Pathway is an alternative to the Voluntary Cleanup Pathway for sites ranked low or medium priority for further investigation or cleanup. The Site Response Program addresses sites of medium or high environmental priority that may require enforcement actions. Brownfield sites can be addressed through any of the cleanup program components.

Brownfields definition: Oregon uses the following working definition: brownfields are real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

Program titles:

- Voluntary Cleanup Program (The Independent Cleanup Pathway or the Voluntary Cleanup Pathway)
- Prospective Purchaser Agreements (PPAs)
- Dry Cleaner Program
- Underground Storage Tank (UST) Cleanup Program

Liability relief provisions: ODEQ's VCP issues NFAs for sites demonstrated not to present unacceptable risk to human health or the environment. (Unacceptable risk is defined in statute—see Oregon Revised Statutes [ORS] §465.315.)

A PPA is a legally binding agreement between ODEQ and a prospective purchaser, which limits the purchaser's liability to ODEQ for environmental cleanup of the property in return for a commitment by the purchaser to undertake and/or fund some of the necessary site cleanup activities. The PPA is authorized through state statute and administrative rule to provide liability protection. It does not provide liability protection from the federal government or from any activities which may result in additional contamination after the property is purchased. A PPA must be negotiated with ODEQ prior to the purchase of the property.

Oregon also has a Dry Cleaner Program. In exchange for liability relief from cleanup costs, dry cleaners pay fees that go into a fund used to clean up solvent contamination at dry cleaner sites. The law protects dry cleaners, under specified circumstances, from individually having to pay for cleanup of releases caused by the use of dry cleaning solvents at their establishments.

Financial incentives (grants, loans, tax provisions, etc.): OECDD offers a variety of financial tools for cleanup and redevelopment activities at known or suspected contaminated sites, including those with petroleum releases. (See the list below under the "Financial Elements" heading for details.)

Funded through a grant with EPA, Site-Specific Assessments (SSAs) may be conducted by ODEQ at publicly controlled sites where hazardous substance contamination, including petroleum, is suspected or known. Should an SSA reveal contamination above ODEQ's acceptable risk standards, ODEQ in some cases may use funds from the EPA grant to conduct limited removal activities.

Legislative or program site eligibility requirements:

For PPAs, the site must be contaminated with hazardous substances, including petroleum, for which remedial activities are necessary to protect human health and the environment. The contamination must not have been caused nor aggravated by the prospective purchaser and ODEQ must determine that a "substantial public benefit" will result from issuing the PPA. More generally, in order to be eligible for ODEQ brownfield consideration, site owners and operators must be willing partners in, and in some cases contribute resources to, site investigation, remediation, and redevelopment activities.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- EPA capitalized the Oregon Coalition Brownfields Cleanup Fund with \$2,400,000 (2004); the fund is available to provide grants and low-interest loans to eligible communities or the private sector for cleanup/non-time-critical removals per the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) §104(k). OECDD serves as lead agency and fund manager on behalf of a coalition of partners. ODEQ, through an intergovernmental agreement, serves as site manager for the program.
- Oregon Industrial Lands Site Assessment Initiative, funded through an EPA Site Assessment grant in 2005 (\$200,000 for hazardous substances), is managed by OECDD.
- State-funded Brownfields Redevelopment Fund managed by OECDD provides direct loan and/or grant program that is available for any site where action is necessary to: 1) determine if a release has occurred; 2) determine if a release poses a significant threat to human health or the environment; or 3) remove contamination from the site. Sites with petroleum releases are eligible.
- State Special Public Works Fund, managed by OECDD, provides technical assistance grants and loans to municipalities for site assessments on public and privately owned industrial brownfields properties seeking certification through the state's Industrial Lands Program (see above). Loans for cleanup are also available for publicly owned industrial brownfields sites.
- Oregon Community Development Block Grants (CDBG), through OECDD, can be used to demolish abandoned, vacant, and deteriorated buildings, decommission underground storage tanks, clean debris, and perform site assessments and cleanups.
- The Oregon Capital Access Program, managed through OECDD, offers loan portfolio insurance for environmental actions and brownfield-redevelopment projects.
- The Oregon Dry Cleaner Fund is administered by ODEQ and pays for assessment and cleanup at qualifying dry cleaner sites. To manage limited funding, sites are prioritized based on human health and environmental threat.
- The Drug Lab Asset Forfeiture Fund (or when the fund is depleted, cost reimbursement agreements with law enforcement agencies) is used for drug lab cleanup.

Tax incentives (abatement, credits, etc.): Federal Brownfields Tax Incentive (expired for costs incurred after 12/31/05, but may be reauthorized by Congress in 2006 or 2007).

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The Technical Assistance to Brownfields Communities (TAB) program (through Oregon State University) provides educational materials and training programs related to cleanup, public health, and risk issues as a means of assisting communities in having their views included in cleanup and redevelopment decision-making processes. The TAB program also assists communities by reviewing and commenting on technical documents, facilitating meetings, organizing and presenting conferences, planning and staging charrettes (i.e., facilitated sessions intended to solve specific redevelopment problems), and performing other community-specific tasks.

Program Elements

Technical Elements

Methods/standards/controls: Applicant has a choice of approach (i.e., removal or institutional controls), to protect public health and the environment. The same standard of site-specific acceptable risk, which includes protection of ecological receptors, must always be met.

Contaminants covered/excluded: Petroleum, hazardous waste, lead paint, polychlorinated biphenyls (PCBs), and CERCLA contaminants can be addressed through the VCP.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): In Oregon, institutional or engineering controls are used when risks of exposure to hazardous substances can be effectively blocked by having legal or administrative measures in place. Typically, institutional controls will be an element in the Record of Decision (ROD) and the Consent Order or other decision document. Most institutional controls will be recorded in county property records. Institutional controls will often complement some other aspect of the remedial action. For example, one may have an institutional control that complements an engineering control: the paper institutional control will prohibit disturbance (or require maintenance) of the physical engineered cap. Institutional controls may prohibit or restrict some actions, or they may require affirmative action.

Monitoring and periodic review will be part of the institutional control to ensure that it is working. The extent and frequency of monitoring and periodic reports will vary with the project. There may be a certain amount of random monitoring of the institutional control (e.g., due diligence inquiries prior to property transfers), but periodic review by ODEQ should be a part of the institutional control and the selected remedy. In addition, properties with institutional controls remain on ODEQ's public Environmental Cleanup Site Information (ECSI) database, Confirmed Release List, and Inventory – as long as the institutional control remains in effect.

Oregon

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: PPA application requires \$2,500 deposit to ODEQ to begin formal negotiation of the agreement. No deposit for VCP required with Intent to Participate Form, but \$5,000 deposit when project manager is assigned. \$1,500 deposit required under Independent Cleanup Pathway (ICP) after applicant receives cost recovery agreement (VCP deposits can be waived for public-sector participants). Once projects become active, ODEQ charges VCP and ICP participants on an hourly basis for project oversight.

Funding source for administrative costs and staff: The VCP and other components of the Environmental Cleanup Program are funded by direct cost recovery from project participants, by hazardous waste disposal fees, and through federal grants.

Cleanup Activities

Sites currently in VCP: 1,085 sites have entered the VCP since its inception in 1989.

Sites completed under VCP: 596 No Further Action letters, 246 removals, 84 RODs, and 20 consent orders.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): An NFA determination from ODEQ provides assurance to current and prospective owners, operators, lenders, and developers that known environmental issues have been addressed in accordance with the Oregon environmental cleanup law (ORS §465.200).

Public Participation

Public participation requirements (notice, comment periods, etc.): Public notice and a 30-day public comment period are required by statute.

Public participation activities (hearing, meetings, etc.): A public meeting is required by statute if requested by 10 or more people or a group having 10 or more members.

Statutory Authorities

- Oregon Environmental Cleanup Laws (ORS §465.200).
- Hazardous Substance Remedial Action Rules (OAR 340–122–0010).

General Information

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Program Description (VCP, brownfield, or related)

The development of Washington's brownfields program began with the adoption of the Model Toxics Control Act (MTCA) cleanup standards in 1991. These cleanup standards included cleanup levels for industrial sites. The brownfields program itself is not defined by statute or rule but continued development of the brownfields program was made with subsequent MTCA statutory and regulatory amendments that addressed such issues as prospective purchaser agreements, lender liability, ground water plume liability, area wide point of compliance, and others.

Washington has a cooperative approach to brownfields. Technical services, assessment, and a revolving loan program are available statewide through several channels:

- Ecology's VCP is the primary program for most contaminated brownfields properties. For a fee, staff will review an independent cleanup report(s) and provide a written decision about the adequacy of the cleanup actions taken and described in the report.
- CTED manages a revolving loan fund and provides technical assistance to parties interested in redeveloping brownfields properties. Technical assistance in submitting applications for a revolving loan or coordinating site assessments and redevelopment is done in partnership with King County/City of Seattle, City of Tacoma, and City of Spokane. Ecology provides site manager technical support to CTED for properties being cleaned up through the Brownfields Coalition Revolving Loan Program. Limited site assessments are available for selected sites with redevelopment plans.

Brownfield definition: Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Voluntary Cleanup Program
- WA Coalition Brownfields Cleanup Revolving Loan Fund (RLF)

Liability relief provisions: Washington has statutory language dealing with lender liability and the liability of contaminated ground water from off-site sources. Also, Ecology has the authority, found in RCW 75.105D.030(1)(i), to provide written opinions regarding whether independent remedial actions meet the substantive requirements of MTCA (Voluntary Cleanup Program). The following assurances are part of Washington's brownfields program:

- **Prospective Purchaser Agreements**—The state may enter into a settlement with a person who proposes to purchase, redevelop, or reuse a contaminated property. Criteria for these agreements are: the agreement will yield substantial new resources to facilitate cleanup; the agreement will expedite remedial action consistent with MTCA; redevelopment or reuse of the property is unlikely to contribute to the existing contamination, to interfere with remedial actions that may be needed at the site, or to increase health risks to persons at or in the vicinity of the site. The primary purpose of this agreement is to promote the cleanup and reuse of vacant or abandoned commercial or industrial commercial property. The Attorney General and Ecology may give priority to settlements that will provide a substantial public benefit.
- **Covenants Not to Sue**—Under state law, when ownership or operation of property is transferred, any Covenant Not To Sue and contribution protection given to the prior owner will automatically apply to successor owners and operators within certain constraints.
- **Lender Liability Exemption**—Federal and state law both grant lenders an exemption from liability for remedial actions while they hold an ownership interest in a facility, primarily to protect a security interest.
- **Contaminated Aquifer Policy**—State law provides an exemption from liability for owners of property that overlies a contaminated ground water plume if the property is not a source of the contamination, and the owners do not contribute to the release of the contamination. Certain conditions concerning access and institutional controls must also be met.

Financial incentives (grants, loans, tax provisions, etc.): Some grants are available for public/private partnerships (e.g., remedial action grants). EPA-capitalized Brownfield Cleanup RLF available through CTED. Cleanup loan funds available through CTED are for private or public entities that are not potentially liable parties for hazardous waste sites, petroleum contaminated sites, or

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methamphetamine contaminated sites. Limited site assessments are also available for sites with strong redevelopment potential. These sites must be selected by CTED and Ecology. Brownfields properties in rural areas may be eligible for other redevelopment assistance or revolving loan funds through other loan portfolio programs. Financial assistance includes:

- Brownfields Cleanup RLF—Up to \$450,000 for eligible sites (funded by EPA).
- Brownfields Project Assistance—For state and local governments to assist economic development projects (funded by US Department of Commerce, Economic Development Administration).
- Remedial Action Grants for Local Governments—Allocated for site cleanup (funded by state Toxics Account).
- Coastal Revolving Loan Fund and Coastal Technical Assistance Loan Fund—Available in coastal counties focus on job creation. \$150,000 and \$50,000 maximums respectively (funded by CTED).

And, incentives:

- Brownfields Federal Tax Incentive—Qualified taxpayers can deduct the cost of environmental remedial action in the year in which the cost is either paid or incurred. Site must be used for trade/business.

Legislative or program site eligibility requirements: No information available.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, meth labs, etc.): Remedial Action Grants Program helps local governments with the costs of cleaning up hazardous waste sites. RLF helps qualifying borrowers pay for cleanup of brownfields. RLF funds may be used at sites that are: 1) publicly-owned, 2) owned by a nonprofit, and 3) privately owned by current or prospective owners provided they did not cause contamination. Eligible site activities for RLF funds include prevention, abatement, or removal of hazardous substances.

Tax incentives (abatements, credits, etc.):

- Tax abatements.
- Business and Occupation (B&O) tax credit for research and development of environmental technologies.
- Federal Brownfields Tax Incentive.
- Tax credits (certain business expansions).

Other forms of support: One hour of consultation on technical issues, free of charge, and free general guidance on compliance with the administrative and technical requirements of the MTCA.

Technical assistance and some infrastructure financing for brownfield redevelopment projects.

Program Elements

Technical Elements:

Methods/standards/controls: Applicant has a choice of cleanup standards, including risk-based standards, although they are not based on Risk-Based Corrective Action (RBCA).

Contaminants covered/excluded: Does not restrict on basis of contaminants

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Institutional controls may be used at an independent cleanup site after treatment and other higher technologies are first attempted. Institutional controls should not be used as a substitute for high priority cleanup actions. Institutional controls may be used at any site when cleanup actions result in residual concentrations of hazardous substances which exceed the Method A or B Cleanup levels, or when conditional points of compliance have been established. When institutional controls are used, a restrictive covenant may be necessary (i.e., if the institutional controls is a physical structure such as a fence, sign, etc.). Confirmation monitoring and five year reviews provide a basis for reopeners or rescinding of NFAs at a given site.

Washington has sustainable land use planning requirements defined through the Growth Management Act (GMA) such as urban growth boundaries.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: \$500 deposit plus hourly charge.

Funding source for administrative costs and staff: Limited funding through CERCLA 128(a) State and Tribal Response Program Grant.

Cleanup Activities

Sites currently in VCP: 2,200 have entered the program.

Sites completed under VCP: 848 cleanups in progress; 1,207 NFA determinations.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): See Financial Incentives and Liability Relief Provisions.

Public Participation

Public participation requirements (notice, comment periods, etc.): Public participation is not a requirement of the VCP. If cleaning up through a brownfields loan, a 30-day public comment period is required on the Analysis of Brownfields Cleanup Alternatives.

Public participation activities (hearing, meetings, etc.): Meetings may be held with the community on redevelopment plans and are a part of the Growth Management Act comprehensive planning process and for critical ordinances.

Statutory Authorities

- Remedial Action Grant Program (Chapter 173–322 WAC).
- *Model Toxics Control Act*, Chapter 70.105D RCW.